

ORDER NO. 1600

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Nanci E. Langley, Vice Chairman;  
Mark Acton;  
Tony Hammond; and  
Robert G. Taub

Competitive Product Prices  
International Business Reply Service  
Contracts 1 (MC2009-14)  
Negotiated Service Agreement

Docket No. CP2013-28

ORDER APPROVING INCLUSION OF CONTINGENCY PRICING ARRANGEMENT  
WITHIN INTERNATIONAL BUSINESS REPLY SERVICE  
COMPETITIVE CONTRACT 1 PRODUCT

(Issued December 28, 2012)

I. INTRODUCTION

On December 14, 2012, the Postal Service filed notice, pursuant to 39 CFR 3015.5, of contingency prices under an outstanding International Business Reply Service (IBRS) Competitive Contract 1.<sup>1</sup> The prices cover postage on certain postage-prepaid items returned from overseas locations to a U.S.-based entity beginning in

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<sup>1</sup> Notice of United States Postal Service of Prices Under Functionally Equivalent International Business Reply Service Competitive Contract 1 Negotiated Service Agreement, December 14, 2012 (Notice).

calendar year 2013 and continuing indefinitely. *Id.* at 5. The Postal Service seeks inclusion of a contingency pricing arrangement (Pricing Arrangement) within the IBRS Competitive Contracts 1 product on the competitive product list. For the reasons discussed below, the Commission approves the request.

## II. BACKGROUND

*Product history.* The Commission added IBRS Competitive Contracts 1 to the competitive product list by operation of Order No. 178, following consideration in Docket No. MC2009-14.<sup>2</sup> The controlling Governors' Decision is No. 08-24. *Id.* at 1-2. The Commission concurrently included a related agreement within this product in companion Docket No. CP2009-20. See Order No. 178 at 11.

IBRS Competitive Contracts 1 are for U.S.-based entities that seek a channel for returned merchandise or other articles from their overseas customers. The U.S. entities typically supply preprinted, prepaid IBRS packaging in which overseas customers can place used or defective consumer items and enter them into the mailstream at no direct cost. Notice at 1. The Postal Service's contracting partners are the recipient of IBRS items, not the sender, and therefore they have no control over the contingency that IBRS items might be tendered after expiration of a contract. *Id.* at 2. Given that costs are incurred in accepting and delivering these items, the Postal Service and its contracting partners have agreed to let the Postal Service set prices to cover costs and potentially incentivize customers into new arrangements. *Id.*

*Instant Pricing Arrangement.* The agreement that triggered the prices in the Pricing Arrangement under consideration was executed prior to the effective date of the Commission's current rules for competitive and market dominant products. *Id.* That agreement expired March 31, 2008, and no successor contract has been executed.

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<sup>2</sup> See Docket Nos. MC2009-14 and CP2009-20, Order Concerning International Business Reply Service Contract 1 Negotiated Service Agreement, February 5, 2009, at 10 (Order No. 178).

The prices in the Pricing Arrangement occur under a surviving contractual term in the underlying agreement. *Id.*

*Effective date; duration.* The Postal Service intends for the new prices to take effect January 1, 2013, and to continue indefinitely. *Id.* at 5; *see also id.* Attachment 1 at 1.

*Instant docket.* In Order No. 1587, the Commission established a docket for consideration of the Postal Service's request, invited public comments, and appointed a public representative.<sup>3</sup>

### III. THE POSTAL SERVICE'S POSITION

*Relationship to other dockets.* The Postal Service states that it has filed three previous notices of changes in contingency prices related to the underlying expired Agreement (for calendar years 2010, 2011, and 2012), and asserts that the Commission has added each pricing arrangement to the competitive product list under the IBRS Competitive Contract 1 product based on functional equivalence. *Id.* at 3-4.

*Functional equivalency.* The Postal Service asserts that the Pricing Arrangement is essentially identical to the pricing arrangements in the agreements the Commission included in the IBRS Competitive Contract 1 product in Docket Nos. CP2009-20 and CP2009-22, with minor procedural variations due to different negotiation outcomes. *Id.* at 5-6. It further asserts that the nature of the service provided in all three agreements is essentially the same. *Id.* at 6. The Postal Service incorporates by reference its position on functional equivalence in Docket No. CP2009-22. *Id.* at 6.

The Postal Service states that it expects the prices in the Pricing Agreement to apply to an extremely small number of postal items due to the mailer's profile and the passage of time since expiration of the contract. *Id.* at 4.

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<sup>3</sup> Notice and Order Concerning International Business Reply Service Competitive Contract 1, December 18, 2012 (Order No. 1587).

#### IV. COMMENTS

The Public Representative filed comments on December 26, 2012.<sup>4</sup> No other comments were received.

*Functional equivalence.* The Public Representative observes the Postal Service addresses similarities between the Pricing Arrangement and other previously-approved pricing arrangements, but also identifies an important difference—that the new contingency prices would remain in effect until modified by the Postal Service. *Id.* at 3. He asserts that the open-ended term of the Pricing Arrangement calls into question its functional equivalence with pricing arrangements previously included in the IBRS Competitive Contract 1 product. However, he observes that the Pricing Arrangement and the IBRS Competitive Contract 1 product operate as a unique response to an expired contract for a very specialized postal service that is available for a relatively few remaining postage-prepaid packages, and notes these packages will ultimately disappear. *Id.* He asserts that for these reasons, it is not necessary for the Commission to reach the question of whether an open-ended agreement expiration term, in normal circumstances, would be functionally equivalent to an agreement with an expiration date. *Id.* He therefore considers the Pricing Arrangement to be functionally equivalent to the pricing arrangements previously approved by the Commission in Docket Nos. CP2009-20 and CP2009-22. *Id.* at 3-4.

39 U.S.C. § 3633. Based on his review of the financial model filed under seal in this docket, the Public Representative concludes that the contingency prices for calendar year 2013 appear to generate sufficient revenues to cover costs and thereby satisfy the requirements of section 3633(a). *Id.* at 4.

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<sup>4</sup> Public Representative Comments on Postal Service Notice of Filing an Additional International Business Reply Service Contract 1 Negotiated Service Agreement, December 26, 2012 (PR Comments).

## V. COMMISSION ANALYSIS

The Commission's responsibility is to review the Pricing Arrangement to ensure that it is functionally equivalent to the baseline agreements (in Docket Nos. CP2009-20 and CP2009-22) and satisfies the requirements of 39 CFR 3015.5 and 3015.7 and 39 U.S.C. § 3633.

Contingent pricing arrangements, like the one under consideration here, typically provide the Postal Service with the flexibility to change rates without the need to enter into an entirely new agreement. In Order No. 178, the Commission determined that the Postal Service, when exercising a contingent pricing provision, must comply with Commission rules by filing the changed rates with the Commission in conformity with 39 CFR 3015.5.<sup>5</sup> The Commission finds that the Postal Service's filing is consistent with the directive in Order No. 178.<sup>6</sup>

The Postal Service's filing concerns an IBRS contract executed prior to the implementation of the Commission's current rules for competitive products. The contract, which expired in March 2008, includes a contingency provision that permits the Postal Service to charge the mailer a new price in the event the parties do not execute a new agreement within 6 months of the expiration (or termination) date. See Order No. 178 at 10.

The instant contract was executed prior to implementation of the Commission's current rules on competitive products. Notwithstanding its lapsed status, the contract specifically permits contingency price changes. Furthermore, the Postal Service notes "that the instant contingency prices are likely to apply to an extremely small number of postal items, due to the mailer's profile and the passage of time since the contract's expiration." Notice at 4.

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<sup>5</sup> See Docket Nos. MC2009-14 and CP2009-20, Order Concerning International Business Reply Service Contract 1 Negotiated Service Agreement, February 5, 2009, at 10 (Order No. 178).

<sup>6</sup> The Postal Service indicates that "the contingency prices provided to the mailer this year are to remain in effect unless the Postal Service chooses to modify the rates." Notice at 5. Modifications to the prices would need to be filed in conformity with 39 CFR 3015.5.

Based on its review of the Notice, supporting materials, and comments received, the Commission finds that the Pricing Arrangement, for the period reflected in the accompanying financial workpapers, should cover its attributable costs (39 U.S.C. § 3633(a)(2)); should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. § 3633(a)(1)); and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. § 3633(a)(3)). In harmony with prior orders and, as requested by the Postal Service, the Pricing Arrangement will be included within the IBRS Competitive Contract 1 product.

The underlying contract expired on March 31, 2008. The Pricing Arrangement continues under a surviving provision of that contract. Notice at 2. The Postal Service shall promptly notify the Commission if service under the expired contract terminates.

#### VI. ORDERING PARAGRAPHS

*It is ordered:*

1. The Pricing Arrangement filed in Docket No. CP2013-28 is included within the International Reply Service Competitive Contract 1 product.
2. The Postal Service shall promptly notify the Commission of the effective date of the Pricing Arrangement if it differs from the intended effective date of January 1, 2013.
3. The Postal Service shall promptly notify the Commission if service under the expired contract terminates.

By the Commission.

Shoshana M. Grove  
Secretary